REMARKS/ARGUMENTS

Reconsideration and allowance of this application are respectfully requested. Currently, claims 1-13, 15-16, 18-26, 29-30 and 32-36 are pending in this application.

Allowable Subject Matter:

Claim 36 is allowable.

Claim 10 has not been rejected, and thus Applicant submits that this claim contains allowable subject matter. Applicant requests indication that claim 10 contains allowable subject matter in the next Office Action.

The previously indicated allowability of claims 18-22, 29 and 35 has been withdrawn. However, for the reasons discussed below, Applicant submits that these claims are in full conformance with 35 U.S.C. §112. These claims have not been rejected in view of prior art. Claims 18-22, 29 and 35 are thus allowable.

Objection to the Claims:

Claim 9 was objected to because of an informality. In particular, the Office Action alleges that "monitors in addition the or each further channel" is not clear. Claim 9 has been editorially amended to require "subsequently monitors ~~in addition the or each further channel~~the one or more further communications channels." The phrase "monitors in addition the or each further channel" has thus been deleted. Applicant therefore requests that the objection to the claims be withdrawn. The phrase "one or more further communications channels" has a proper antecedent basis.

Rejection Under 35 U.S.C. §112:

Claims 18-22, 29 and 35 were rejected under 35 U.S.C. §112 as allegedly being indefinite. Applicant respectfully traverses this rejection.

The Office Action alleges that "calculating at the user terminal using the tariff data a charge for traffic communicated between the network and the terminal and making a payment" as required by claim 18 is unclear. Applicant respectfully disagrees with this allegation. This limitation requires that a charge is calculated for traffic communicated between a network and a user terminal. The charge is calculated at the user terminal. The charge is calculated using tariff data. Payment is made and can be compared with payment due as recited in step (c) of claim 18.

The Office Action also alleges that "and for sampled traffic comparing the network usage..." as required by claim 29 is unclear. Applicant respectfully disagrees with this allegation. This limitation (and surrounding claim wording) requires that the network usage and the network usage data from a customer terminal are compared. However, the network usage and the network usage data is compared for only a sampled part of the traffic communicated between a customer terminal and a network (i.e., not necessarily for all of the traffic, but only for a sampled part).

Claim 19 has been amended to that a "user status" has a proper antecedent basis.

Accordingly, Applicant respectfully requests that the rejection of claims 18-22, 29 and 35 under 35 U.S.C. §112 be withdrawn.

Rejections Under 35 U.S.C. §103:

Claims 1, 8-9 and 23-25 were rejected under 35 U.S.C. §103 as allegedly being unpatentable over Voit et al (U.S. '275, hereinafter "Voit") in view of Szybicki (U.S. '019). Applicant respectfully traverses this rejection.

In order to establish a *prima facie* case of obviousness, all of the claim limitations must be taught or suggested by the prior art. Applicant respectfully submits that the combination of Voit and Szybicki fails to teach or suggest distributing a tariff to a multiplicity of customer terminals connected to a communications network, the tariff comprising a formula for calculating a charge as a function of a loading of the communications network, as required by independent claim 1.

Page 4 of the Office Action admits "Voit is silent on routing/distributing to multiple users and the tariff calculating as a function of a loading (emphasis added)." Voit is not really concerned centrally with the particular type of charging mechanism to use at all, but is only really concerned with providing a gateway between PSTN and internet telephony services, so that internet telephony services may be provided which will enable some sort of charge to be made and billed to a customer. Applicant respectfully submits that Szybicki fails to remedy this admitted deficiency of Voit. That is, Szybicki fails to teach or even suggest distributing to customer terminals a tariff comprising a formula for calculating a charge as a function of a loading of the communications network. Accordingly, the combination of Voit and Szybicki does not teach or suggest dynamic charging - i.e. charging an amount for network usage which

depends on the loading of the network. Through this feature, dynamic pricing may be achieved in which a spot price varies depending on the loading of the communications network. For example, when the network is congested, the cost of using the network increases to throttle back demand for the network until the network ceases to be congested. (See page 7, lines 26-31 and page 12, lines 21-29 of the originally-filed specification).

Page 4 of the Office Action alleges that "Szybicki (US Pat 4,756,019) discloses...traffic algorithms are routed to a plurality of nodes (SPC nodes/users/subscribers), whereby the tariff algorithm is a function of load/capacity (col. 4, line 48 thru col. 6, line 67, col. 11, line 39 thru col. 15, line 65)." However, neither the explicitly cited portions nor Szybicki taken as a whole describes this feature. Rather, in Szybicki (as is clear from the specification as a whole), the tariffs are substantially fixed and depend only upon distance, time of day and service type, rather the way in which calls are routed. For example, see col. 4 lines 58-66 ("The invention ... trunk groups"), col. 8 lines 35-47 ("The selection of nodes ... by the tandem connection") and col. 11 lines 37-41 ("The principle of the invention ... the low tariff services"). Whether or not a call request will be allowed via a two or three link connection depends on the amount of revenue expected to be generated from the call based on the tariff which applies to the requested call. This is clearly very different from having a tariff algorithm which comprises "a formula for calculating a charge as a function of a loading of the

communications network, for use by at least one of the customer terminals of the communications network," as required by claim 1.

Also there is no reference in Szybicki of the feature "distributing a tariff ... to a multiplicity of customer terminals," as required for example by claim 1. Indeed, the Office Action does not even seem to say that Szybicki discloses this, but rather seems to allege that Szybicki discloses "wherein routing policies including tariff algorithms are routed to a plurality of nodes (SPC nodes/users/subscribers)" without pointing to a specific part of Szybicki where this is disclosed. Moreover, it would be very unlikely for routing policies to be distributed to end users since this is not something which need concern them, routing being the concern of the network, not end users. Rather, Szybicki appears to teach transmitting this data to SPC controlled exchanges (also known as local offices) which are referred to in Szybicki as "switch nodes."

Accordingly, Applicant respectfully submits that claims 1, 8-9 and 23-25 are not "obvious" over Voit and Szybicki, and therefore respectfully requests that the rejection of these claims under 35 U.S.C. §103 be withdrawn.

Claim 3 was rejected under 35 U.S.C. §103 as allegedly being unpatentable over Voit in view of Szybicki and further in view of Itou et al (US '754, hereinafter "Itou"). Claims 4-7 were rejected under 35 U.S.C. §103 as allegedly being unpatentable over Voit in view of Szybicki and further in view of Wulkan et al (WO '749, hereinafter "Wulkan"). Since claims 3-7 depend directly or indirectly from base claim 1, Applicant submits that the comments made above with respect to the combination of Voit and

Szybicki apply equally to these claims. Each of Itou and Wulkan fails to remedy the above described deficiencies of Voit and Szybicki. Applicant thus respectfully requests that the rejection of claims 4-7 be withdrawn.

Claims 2, 13, 15-16, 23-26 and 33 were rejected under 35 U.S.C. §103 as allegedly being unpatentable over Voit in view of Szybicki and further in view of Saari et al (U.S. '046, hereinafter "Saari"). Applicant respectfully traverses this rejection. Claims 2, 13 and 15 depend at least indirectly from claim 1 (discussed above). Applicant submits that Saari fails to remedy the above described deficiencies of Voit and Szybicki. For example, Saari fails to disclose tariffs distributed to customer terminals which comprise a formula for calculating a charge as a function of the loading of the communications network. Indeed, Saari discloses all of the charge processing being performed within a network.

Independent claim 16 requires, *inter alia*, a plurality of different tariffs distributed to a respective customer terminal attached to a communications network, one or more of the different tariffs being varied in dependence upon the loading of network resources and the plurality of different tariffs having different respective volatilities. The three-way combination of Voit, Szybicki and Saari fails to teach or suggest these claim limitations. In particular, Saari fails to disclose tariffs having different volatilities. Moreover, Szybicki (as discussed above) fails to teach or suggest varying one or more of the plurality of different tariffs in dependence upon the loading of the network resources.

Independent claim 23 requires, *inter alia*, distributing a tariff to a multiplicity of customer terminals connected to a communications network including communicating separately a formula for calculation of network charges and coefficients for use in the formula. The three-way combination of Voit, Szybicki and Saari fails to teach or suggest these claimed features. Saari simply describes numerous occasions that a user's cost will typically depend on parameters which the user is able to choose such as the nominal bit rate and/or a specified priority level for traffic falling within the agreed parameters. The various formulas described by Saari are for calculating a packet's priority level depending on the actual measured bit rate compared to the user's agreed upon and paid for nominal bit rate. Saari and Szybicki each fails to teach or suggest tariffs which are distributed with formulas and coefficients distributed to a customer terminal separately.

Independent claim 26 requires, *inter alia*, "a processor connected to the meter and to the store and arranged to calculate using the tariff information and information relating to the measured use by the customer terminal of the network and information relating to the measured state of the network, a network usage charge." The three-way combination of Voit, Szybicki and Saari fails to teach or suggest this claimed feature. While Szybicki discloses providing tariff information including a current tariff, a future tariff and a time until a tariff switch will occur, to a mobile communications device, Szybicki fails to disclose calculating a network usage charge using tariff information, information relating to the measured use by the customer terminal, and information relating to the measured state of the network.

Accordingly, Applicant submits that the rejection of still pending claims 2, 13, 15-16, 23-26 and 33 under 35 U.S.C. §103 be withdrawn.

Claims 11-12, 30 and 32 were rejected under 35 U.S.C. §103 as allegedly being unpatentable over Voit in view of Szybicki and further in view of Okamoto. Applicant respectfully traverses this rejection. Since claims 11-12 and 30 depend at least indirectly from claim 1, all of the comments made with respect to Voit/Szybicki apply equally to these claims. Okamoto fails to remedy these deficiencies. Independent claim 32 requires, *inter alia*, "automatically varying, depending on network loading as detected at a customer terminal, a tariff for network usage by a customer terminal, the tariff being distributed to the terminal and comprising a formula for calculating a charge as a function of the loading of the communications network for use by the customer terminal." The three-way combination of Voit, Szybicki and Okamoto fails to teach or suggest this claimed feature.

Accordingly, Applicant respectfully submits that claims 11-12, 30 and 32 are not "obvious" over Voit, Szybicki and Okamoto and respectfully requests that the rejection of these claims under 35 U.S.C. §103 be withdrawn.

Conclusion:

Applicant believes that this entire application is in condition for allowance and respectfully requests a notice to this effect. If the Examiner has any questions or believes that an interview would further prosecution of this application, the Examiner is invited to telephone the undersigned.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: _____
Raymond Y. Mah
Reg. No. 41,426

RYM:
901 North Glebe Road, 11th Floor
Arlington, VA 22203
Telephone: (703) 816-4044
Facsimile: (703) 816-4100

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of
BRISCOE et al.

Atty. Ref.: 36-1382

Serial No. 09/674,717

TC/A.U.: 2616

Filed: November 6, 2000

Examiner: Jones, P.

For: COMMUNICATIONS NETWORK

* * * * * * * * * * * *

June 4, 2007

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

INFORMATION DISCLOSURE STATEMENT

Listed on accompanying Form PTO/SB/08A are documents that may be considered material to the examination of this application, in compliance with the duty of disclosure requirements of 37 C.F.R. §§ 1.56, 1.97 and 1.98.

Where the publication date of a listed document does not provide a month of publication, the year of publication of the listed document is sufficiently earlier than the effective U.S. filing date and any foreign priority date so that the month of publication is not in issue. Applicants have listed publication dates on the attached form PTO/SB/08A based on information presently available to the undersigned. However, the listed publication dates should not be construed as an admission that the information was actually published on the date indicated.

Applicants reserve the right to establish the patentability of the claimed invention over any of the information provided herewith, and/or to prove that this information may not be prior art, and/or to prove that this information may not be enabling for the teachings purportedly offered.

This statement should not be construed as a representation that a search has been made, or that information more material to the examination of the present patent application does not exist. The Examiner is specifically requested not to rely solely on

the material submitted herewith. It is further understood that the Examiner will consider information that had been cited by or submitted to the U.S. Patent and Trademark Office in a prior application relied on under 35 U.S.C. § 120. 1138 OG 37, 38 (May 19, 1992).

Applicants have checked the appropriate boxes below.

1. ☐ This Information Disclosure Statement is being filed within three months of the U.S. filing date OR before the mailing date of a first Office Action on the merits. No statement under 37 C.F.R. § 1.97(e) or fee is required. In the event, a first Office Action has been mailed prior to filing of the present Information Disclosure Statement, the Office is requested to treat the present paper s a submission under 37 C.F.R. § 1.97(c) and charge the undersigned's Deposit Account No. 14-1140 for the fee required by 37 C.F.R. § 1.17(p). The present paper is submitted in duplicate for this purpose.

2. ☒ This Information Disclosure Statement is being filed more than three months after the U.S. filing date AND after the mailing date of the first Office Action on the merits, but before the mailing date of a Final Rejection or Notice of Allowance.

   a. ☐ I hereby state that each item of information contained in this Information Disclosure Statement was cited in a communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of this Information Disclosure Statement. 37 C.F.R. § 1.97(e)(1).

   b. ☐ I hereby state that no item of information in this Information Disclosure Statement was cited in a communication from a foreign patent office in a counterpart foreign application, and, to my knowledge after making reasonable inquiry, no item of information contained in this Information Disclosure Statement was known to any individual designated in 37 C.F.R. § 1.56(c) more than three months prior to the filing of this Information Disclosure Statement. 37 C.F.R. § 1.97(e)(2).

   c. ☒ Attached is the amount of $ 180 in payment of the fee under 37 C.F.R. § 1.17(p).

3. ☐ This Information Disclosure Statement is being filed more than three months after the U.S. filing date and after the mailing date of a Final Rejection or Notice

of Allowance, but before payment of the Issue Fee. It is hereby requested that the Information Disclosure Statement be considered. Attached is our Check No. in the amount of $ in payment of the fee under 37 C.F.R. § 1.17(i).

a. ☐ I hereby state that each item of information contained in this Information Disclosure Statement was cited in a communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of this Information Disclosure Statement. 37 C.F.R. § 1.97(e)(1).

b. ☐ I hereby state that no item of information in this Information Disclosure Statement was cited in a communication from a foreign patent office in a counterpart foreign application, and, to my knowledge after making reasonable inquiry, no item of information contained in this Information Disclosure Statement was known to any individual designated in 37 C.F.R. § 1.56(c) more than three months prior to the filing of this Information Disclosure Statement. 37 C.F.R. § 1.97(e)(2).

4. ☐ Relevance of the non-English language document(s) is discussed in the present specification.

5. ☐ Some of the documents were cited in a corresponding foreign application. An English language version of a communication issued in the corresponding foreign application is attached for the Examiner's information.

6. ☐ A concise explanation of the relevance of the non-English language document(s) appears below:

7. ☒ The Examiner's attention is again directed to U.S. Patent Application Nos. 09/674,706, filed November 6, 2000, (copy previously provided), 09/674,720, filed November 6, 2000 (copy previously provided) and 10/276,863, filed November 20, 2002 (published as US 2003/0154174 on August 14, 2003, copy previously provided) which are directed to related technical subject matter. The identification of these U.S. Patent Applications is not to be construed as a waiver of secrecy as to that application now or upon issuance of the present application as a patent. The Examiner is respectfully requested to consider the cited applications and the art cited therein during examination,

as well as the entire prosecution histories of each of these applications including all issued and future Office Actions and Applicant responses. Copies of the Office Action mailed 6/13/06 and Applicant Response filed 9/13/06 in U.S. Appln. No. 674,706 and copies of the Office Action mailed 5/29/07 and Applicant Response filed 2/28/07 in U.S. Appln. No. 674,720 are attached.

8. ☐ Copies of the documents were cited by or submitted to the Office in Application No. , filed , which is relied upon for an earlier filing date under 35 U.S.C. § 120. Thus, copies of these documents are not attached. 37 C.F.R. § 1.98(d).

It is respectfully requested that the Examiner initial and return a copy of the enclosed FORM PTO/SB/08A, and to indicate in the official file wrapper of this patent application that the documents have been considered.

The U.S. Patent and Trademark Office is hereby authorized to charge any fee deficiency, or credit any overpayment, to our Deposit Account No. 14-1140 referencing docket number 36-1382.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: _____
Raymond Y. Mah
Reg. No. 41,426

RYM:sl
901 North Glebe Road, 11th Floor
Arlington, VA 22203-1808
Telephone: (703) 816-4000
Facsimile: (703) 816-4100